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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.1235 of 2022

and

W.M.P.Nos.1323 & 1324 of 2022

S.Mumtaj Beevi

... Petitioner

Vs.

1. Union of India,  
Ministry of Home Affairs,  
North Block, New Delhi - 110 001.
2. The Custodian of Enemy Property of India (CEPI),  
O/o. the Custodian of Enemy Property of India,  
New Delhi Head Office, 1st Floor, East Wing,  
Shivaji Stadium (Annex Building), Connaught Place,  
New Delhi - 110 001.
3. The District Collector,  
District Collector Office,  
Kallakurichi.
4. The District Revenue Officer,  
Kallakurichi.
5. The Revenue Divisional Officer,  
Kallakurichi.
6. The Revenue Tahsildar,  
Sankarapuram,  
Kallakurichi District.

...Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration to declare the properties comprised in Survey Nos.52/2B now sub-division No.52/2B1 measuring an extent of 1.92 Acres; 50/2B now sub-division No.50/2B1 measuring to an extent of 1.94 Acres and 53/6 measuring to an extent of 2.13 Acres situated at Pootai Village, Sankarapuram Taluk, Kallakurichi District belongs to Dr.Azisudeen are not enemy properties and consequently direct the respondents 1 and 2 not to deal with the said properties in any manner forthwith.



For Petitioner : Mr.R.Bharath Kumar  
For Respondents R1 & R2 : Mr.K.Subbu Ranga Bharathi  
For Respondents R3 to R6 : Mrs.C.Sangamithirai  
Special Government Pleader

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## O R D E R

The petitioner has filed this writ petition seeking to declare the properties comprised in Survey Nos.52/2B now sub-division No.52/2B1 measuring to an extent of 1.92 Acres; 50/2B now sub-division No.50/2B1 measuring to an extent of 1.94 Acres and 53/6 measuring to an extent of 2.13 Acres situated at Pootai Village, Sankarapuram Taluk, Kallakurichi District belongs to Dr.Azisudeen are not enemy properties and consequently direct the respondents 1 and 2 not to deal with the said properties in any manner forthwith.

2. Mr.K.Subbu Ranga Bharathi learned counsel takes notice for respondents 1 and 2 and Ms.Sangamithirai, learned Special Government Pleader takes notice for respondents 3 to 6. On the consent of the learned counsel appearing on either side, the matter is taken up for final disposal.

3. The case of the petitioner is that one Dr.Azisudeen, was the absolute owner of the lands comprised at Survey Nos. 50/2, 51/2, 52/2, 53/6, 48/1, 383/4, 323/4, 323/6 and 371/2 totally measuring an extent of 31.33 acres situated at Pootai Village, Sankarapuram Taluk, presently Kallakurichi District. The said properties have gone through the hands of many persons and finally stood conveyed in favour of the petitioner and the petitioner is the absolute owner and is in peaceful possession and enjoyment of the properties comprised in Survey Nos.52/2B (As per sub-division 52/2B1), measuring an extent of 1.92 Acres; 50/2B (As per sub-division 50/2B1), measuring an extent of 1.94 Acres and 53/6, measuring an extent of 2.13 Acres. After the demise of the said Dr. Azisudeen in the year 1971, the 1<sup>st</sup> respondent issued a show cause notice dated 18.12.1980 to his son, Anisur Rahman and others. Subsequent to the said notice, a detailed reply was filed by the noticees within the stipulated period. However, without examining the said reply, the 1<sup>st</sup> respondent again issued a notice dated 10.07.1981 and held that the said Anisur Rahman had no right to sell the properties which belonged to the 2<sup>nd</sup> respondent herein and therefore, the purchase/sale, which took place is violative of the Enemy



Property Act, 1968 and called for an explanation and the same was duly submitted. However, no orders have been passed thereafter. Hence, the present Writ petition is filed to declare the above said properties belonging to Dr. Azisudeen are not enemy properties.

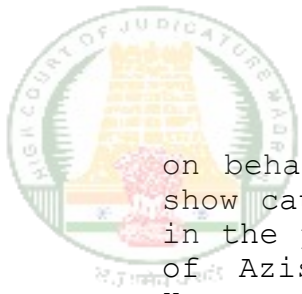
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4. The learned counsel appearing on behalf of the petitioner submitted that except the show cause notice dated 18.12.1980 and the subsequent notice dated 10.07.1981, no notice was issued to the petitioner in terms of the Section 5 A of the Enemy Property Act for possessing the property in the name of the Government of India and no orders have been passed on the detailed reply submitted by the noticees. He further submitted that the vendor of the petitioner's vendor had obtained Indian Citizenship as per Article 5 of the Constitution of India. Hence, declaring that part of the property as Enemy Property held by an Indian citizen is not sustainable. However, in the absence of declaration under Section 5A of the Enemy Property Act, acquiring the property of the petitioner cannot be permitted.

4.1. Furthermore it is submitted that admittedly the vendor of the petitioner's vendor, namely, Azisudeen is an Indian Citizen and lived in India throughout his lifetime and died in India. Though his children and wife migrated to Pakistan, thereafter, his elder son, viz., Anisur Rahman returned to India in the year 1965 and obtained Indian citizenship on 01.04.1974 and became the successor of the said properties. Therefore, when both the petitioner's vendor and father of Anisur Rahman, the previous vendor are Indian Citizen, the properties sold and transferred by the said Anisur Rahman were valid and no infirmity can be attributed to the said sale and the proceedings initiated by the 6<sup>th</sup> respondent at the behest of the 2<sup>nd</sup> respondent is illegal. Hence, the provisions of the Enemy Property Act cannot be attracted as against the petitioner vendor vendor.

4.2. It is the further case of the petitioner that based on the representation of the 2<sup>nd</sup> respondent before respondents 4 and 5 seeking to cancel the patta standing in the name of the respective purchasers, the 6<sup>th</sup> respondent vide proceedings in Na.Ka.A5/3404/2020 issued summon dated 21.11.2021 for enquiry which is not sustainable, as the same is hit by Section 18B of the Enemy Property Act, which envisages that no civil court or authority has jurisdiction to entertain any suit or proceedings in respect of any property which is the subject matter of the Enemy Property Act. Therefore, the order passed by the respondents is wholly unsustainable and this writ petition deserves to be allowed.

5. The learned Central government Standing Counsel appearing



on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> respondents submitted that, already show cause notice was issued as against the subsequent purchaser in the year 1981 and it clearly held that the Anisur Rahman, son of Azisudeen is the successor of the disputed properties. However, since he went to Pakistan, any lands standing in the name of such persons, is barred from being either sold or purchased by such person, as the same is a violation under the Enemy Property Act. He further submitted that notice dated 18.12.1980 was issued in terms of the Notification No.12/2/65-E dated 10.09.1965 issued by the 1<sup>st</sup> respondent. It is further submitted that in terms of the said notification, declaring the property as Enemy Property, without challenging the said notification and the constitutionality of the Enemy Property Act, filing of the present writ petition is wholly impermissible and erroneous and, accordingly, prays for dismissal of the present Writ petition.

6. The learned Special Government Pleader appearing on behalf of the respondents 3 to 6 submitted that, as per the Section 2C of the Enemy Property Act, 1968, any property held or managed by the enemy and is continued as such is to be recorded as Enemy Property. In this case, the original vendor, viz., Azisudeen was an India Citizen, however, his son went to Pakistan and returned to India in the year 1965 and immediately after the demise of the said Azisudeen, though the petitioner claims that the the property devolved upon his son, viz., Anisur Rahman, the said individual having migrated to Pakistan, the property devolved on the 2<sup>nd</sup> respondent and after proper notice, the properties vested with the 2<sup>nd</sup> respondent. Therefore, the claim of the petitioner cannot be sustained and this writ petition is liable to be dismissed.

7. Heard the arguments advanced by the learned counsel on either side and perused the materials available on record.

8. To appreciate the contention, it is necessary to peruse the show cause notice dated 10.07.1981, which was issued pursuant to the circular. For better appreciation, the relevant portion of the circular is quoted hereunder :-

"All immovable properties in India belonging to or held by or managed on behalf of all Pak nationals became vested in the Custodian of Enemy Property as enemy properties and whereas on the expiry of the said Defence of India Rules on 19<sup>th</sup> July, 1968, such vesting of the enemy properties in the said Custodian has been continued under the Enemy Property Act, 1968 and whereas on the expiry of the emergency in Sept, 1977 such vesting has been further continued under the Enemy Property Amendment Act, 1977."



It is the admitted case that Azisudeen died in the year 1971 and his son, viz., Anisur Rahman, had obtained Indian citizenship only in the year 1974. The above facts have been disclosed in the notice, which is not disputed by the petitioner. Such being the undisputed position, immediately on the death of Azisudeen, the property held by the said Azisudeen, stood transferred to the 2<sup>nd</sup> respondent and Anisur Rahman, son of Azisudeen had no right to sell the property in terms of the provisions of the Enemy Property Act, 1968.

9. It is not in dispute that Anisur Rahman had migrated to Pakistan and on his return, obtained Indian citizenship only in the year 1974. Such being the case, immediately on the demise of Azisudeen in the year 1971 the property held by the said Azisudeen stood converted as "Enemy Property" and stood vested with the Custodian. Only on the basis of the same and also the circular aforesaid, notice was issued to the petitioner. Though the petitioner claims that he has given reply to the notice dated 18.12.1980, yet, for the subsequent notice dated 10.7.1981, no reply has been given by the petitioner. Without challenging the said notice, the petitioner cannot maintain the present writ petition.

10. Section 2 (c) of the Act defines the term "enemy property" and for better appreciation, the same is quoted hereunder :-

(c) "enemy property" means any property for the time being belonging to or held or managed on behalf of an enemy, an enemy subject or an enemy firm:

Provided that where an individual enemy subject dies in the territories to which this Act extends, <sup>5</sup>[or dies in any territory outside India], any property which immediately before his death, belonged to or was held by him or was managed on his behalf, may, notwithstanding his death, continue to be regarded as enemy property for the purposes of this Act;

[Explanation 1.--For the purposes of this clause, it is hereby clarified that "enemy property" shall, notwithstanding that the enemy or the enemy subject or the enemy firm has ceased to be an enemy due to death, extinction, winding up of business or change of nationality or that the legal heir and successor is a citizen of India or the citizen of a country which is not an enemy, continue and always be deemed to be continued as an enemy property."



From the above, it is clear that any property held or managed on behalf of an enemy, an enemy subject or an enemy firm as aforesaid shall be deemed to be enemy properties. In the case on hand, Azisudeen died in the year 1971 and immediately on the death of the said Azisudeen, the property stood vested with the Custodian and, thereafter, transfer of the property to any other person becomes void.

11. Further, Section 6 of the Enemy property Act prohibits the transfer of property vested in the Custodian by an enemy, enemy subject or enemy firm. For better appreciation, the relevant provision is extracted hereunder:-

"6. Prohibition to transfer any property vested in Custodian by an enemy, enemy subject or enemy firm.-(1) No enemy or enemy subject or enemy firm shall have any right and shall never be deemed to have any right to transfer any property vested in the Custodian under this Act, whether before or after the commencement of this Act and any transfer of such property shall be void and shall always be deemed to have been void. "

Even a bare perusal of Section 6 (1) aforesaid, reveals that the once the property stood vested in the Custodian under the Act, no enemy or enemy subject or enemy firm shall have right to transfer any property, whether before or after the commencement of the Act and that such transfer shall be deemed to be void. Admittedly, notice was issued in the year 1980 and 1981 and the property was declared as Enemy Property. It is the case of the petitioner even that he purchased the property in the year 2008 after the Act and after the declaration notification was issued. Such being the case, the transfer of the property by way of purchase is clearly barred u/s 6 of the Act and, therefore, the said purchase itself is void. Such being the case, the petitioner has no right to file this writ petition.

12. Insofar as the contention relating to Section 18-B of the Enemy Property Act, though the contention relates to cancellation of patta standing in the names of the respective purchasers, which is barred, however it is to be pointed out that once the property vests with the Custodian and transfer is barred under Section 6 of the Act, the petitioner cannot take the stand that cancellation of patta is impermissible u/s 18-B as the patta granted in favour of the subsequent purchasers would also be deemed to be void and, therefore, cancellation of patta sought for cannot be said to be bad.

13. For the reasons aforesaid, this writ petition is liable



to be dismissed and, accordingly, the same is dismissed.  
Consequently, connected Miscellaneous petitions are closed.  
There shall be no order as to costs.

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Sd/-  
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

GLN/Skt

To:

1. The Ministry of Home Affairs,  
Union of India,  
North Block, New Delhi - 110 001.
2. The Custodian of Enemy Property of India (CEPI),  
O/o. the Custodian of Enemy Property of India,  
New Delhi Head Office, 1st Floor, East Wing,  
Shivaji Stadium (Annex Building), Connaught Place,  
New Delhi - 110 001.
3. The District Collector,  
District Collectorate Office,  
Kallakurichi.
4. The District Revenue Officer,  
Kallakurichi.
5. The Revenue Divisional Officer,  
Kallakurichi.
6. The Revenue Tahsildar,  
Sankarapuram,  
Kallakurichi District.

+1cc to Mr.R.Bharath Kumar, Advocate, S.R.No.6602

+1cc to the Government Pleader, S.R.No.6856

W.P.No.1235 of 2022  
and  
W.M.P.Nos.1323 & 1324 of 2022

SV(CO)  
SU(01/04/2022)